

**In the United States Bankruptcy Court**  
**for the**  
**Southern District of Georgia**  
**Savannah Division**

**FILED**

at 3 O'clock & 11 min PM  
Date 2/15/00

MICHAEL F. McHUGH, CLERK  
United States Bankruptcy Court  
Savannah, Georgia *MB*

In the matter of:	)	
	)	Chapter 7 Case
WILLIAM E. JARRELL	)	
JOYCE L. JARRELL	)	Number <u>95-42026</u>
	)	
<i>Debtors</i>	)	

**SUPPLEMENTAL ORDER ON DISTRIBUTION**

The Court signed an Order on December 16, 1999, approving final distribution in this case which included Trustee compensation of \$2,012.10, Trustee's expenses of \$20.46, and attorney's fees for counsel to the Trustee in the amount of \$2,833.94. This Order is entered for the purpose of providing some illumination of the Court's reasons for approving the fees sought by the Trustee, Wiley A. Wasden, III, and the Trustee's Counsel, Brennan and Wasden.

In their initial application for final compensation, Wiley A. Wasden, III, ("Trustee"), sought compensation in the amount of \$2,012.10 and Brennan and Wasden, ("Counsel") claimed \$7,945.00 in attorney's fees. The application of Counsel revealed that during the pendency of the case, services were rendered totaling 65.90 hours in the total amount of \$7,945.00. The application is set forth in detail and enumerates the date, the nature of the services, and the hours devoted, for October 30, 1995, through

September 17, 1999. The services rendered are not, however, divided between those which require the participation of Counsel and those which are ordinary Trustee services. Because Mr. Wasden, a partner in the firm of Brennan and Wasden, serves in the dual capacity of Trustee and attorney for the Trustee, it is necessary to make such a delineation in services in order to determine the allowable compensation to him in his two separate capacities. In re Concrete Products, Inc., Ch. 11 Case No. 88-20540 (Bankr. S.D.Ga., Feb. 7, 1992).

Because the application did not comply with Concrete Products, *supra*, the Office of the United States Trustee filed an objection to Mr. Wasden's application. In all, the United States Trustee challenged as services which should not be compensated because they were in the nature of Trustee services and not attorney's services, a total of 16.3 hours and an additional three hours which were for services performed in an unrelated bankruptcy case. In addition to specifically challenging the 19.3 hours the United States Trustee questioned the overall reasonableness of the fee award in light of the results obtained in the case.

As is now obvious to all parties, this case did not result in any distribution to unsecured creditors. The Trustee obtained authorization to sell a parcel of real estate which was listed for \$25,000.00 and, if sold, would have resulted in a distribution to unsecured creditors. (Doc. 14). When the realtor was unsuccessful in marketing it for

many months the Debtor filed a Motion to Compel the Trustee to Abandon the interest in the real estate which the Trustee opposed. (Docs. 18, 22). After two hearings on the Motion, by Order entered June 27, 1997, I denied the Debtor's Motion on an interim basis and ordered that a continued hearing be conducted after additional efforts were undertaken to market the property. Ultimately, at a hearing on January 21, 1998, the Court approved the Trustee's application to sell the property for \$17,500.00, which was substantially less than the original listing price, but which still exceeded the Debtor's claim of exemption. (Docs. 30, 36).

In the aftermath of this reduction in the sales price, no dividend will be paid to unsecured creditors. However, the Trustee's proposed distribution provides \$5,400.00 in cash to the Debtor, William E. Jarrell, on account of his exemption, will pay Chapter 7 administrative expenses, will pay all tax claims for unpaid property taxes in 1995, 1996, and 1997, and will pay \$5,400.00 toward the unsecured priority claim of the Debtor's ex-wife. Total disbursements in the case amount to \$18,020.96.

The United States Trustee supports its objection by proffering evidence that allowance of professional fees and expenses which amount to approximately 36% of the funds disbursed is outside the normal parameters of professional fees in cases reviewed by the United States Trustee, and therefore not reasonable. Having considered the objection I determined that it should be overruled and previously entered the Order

authorizing the Trustee his full commission of \$2,012.10 and Counsel its reduced attorney's fee claim of \$2,833.94.

The United States Trustee is correct that many of the hours for which compensation was originally sought should have been categorized as Trustee time and not separately billed as attorney's compensation. However, Mr. Wasden's voluntary reduction of his attorney's fee claim from \$7,945.00 to \$2,833.94 more than compensates for the time which he spent which constituted Trustee duties. The remaining time entries are sufficient in detail to justify allowance under 11 U.S.C. Section 330 which provides that professionals engaged by the Trustee are entitled to reasonable compensation for services rendered.

The question remains then - was the benefit obtained, in the final analysis, so poor that the fees should be further reduced. I concluded when I entered the Order approving this distribution that it was not. While the results to the estate were not as beneficial as anticipated when the property was listed, the Trustee succeeded in paying all administrative expenses, all unpaid property taxes and a portion of the priority unsecured claim of the Debtor's ex-wife.

A Chapter 7 Trustee's duty is not limited to taking actions which operate to the benefit of unsecured creditors alone, although that is a primary responsibility.

Rather, the Trustee's duties as enumerated in 11 U.S.C. Section 704 require the Trustee to collect, and reduce to money, all property of the estate; to be accountable for the same; to investigate the financial affairs of the debtor; to object to claims; on occasion to oppose the discharge of the debtor; and, *inter alia*, to make a final report and accounting of his administration of the estate to the United States Trustee. That in turn triggers his obligations under 11 U.S.C. Sections 725 and 726 to dispose of property of the estate in a way that honors the valid liens and priority claims of creditors and not simply those of unsecured creditors.

Accordingly, to the extent that the result obtained in this case was not perfect, and was not even as favorable to creditors as initially anticipated, there was, even in retrospect, a better result than if the property had simply been abandoned to the Debtors which would have benefitted no class of creditors. Moreover, the criteria for allowing compensation found in 11 U.S.C. Section 330(a)(3) reads as follows:

(a)(3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the

completion of, a case under this title;

- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and
- (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Therefore, to the extent that hindsight is an appropriate prism through which to view the allowance of professional fees, the Court is permitted to analyze the benefit to the estate, but must also consider "whether the services were necessary to the administration of the estate . . . at the time they were rendered."

If the services were neither reasonably likely to benefit the estate nor necessary to the administration of the case, then the Court is authorized to disallow compensation. 11 U.S.C. § 330(a)(4)(A). But for the reasons already stated, at the time these services were rendered by the Trustee and Counsel, they were necessary to the administration of the case. The Trustee had been authorized and directed to sell the property and his efforts to keep that process on track in opposing the Debtor's motion were reasonably likely to benefit the estate. Finally, even viewed in hindsight they did benefit the estate.

Accordingly, I find that the Trustee and Counsel are entitled to

compensation in the case. He voluntarily waived a larger proportion of his fee than would be required by strict mathematical application of the lodestar rate to the number of hours devoted to the case, and the resulting compensation, although higher in percentage terms than the usual fee, is still reasonable in light of the contested issues faced by the Trustee, and the lower than anticipated selling price for the property.



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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 15<sup>th</sup> day of February, 2000.